

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6122

BILL NUMBER: HB 1209

NOTE PREPARED: Jan 29, 2008

BILL AMENDED: Jan 28, 2008

SUBJECT: Criminal Law and Procedure.

FIRST AUTHOR: Rep. Smith V

FIRST SPONSOR: Sen. Waterman

BILL STATUS: As Passed House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Vacating Additional Fixed Term of Incarceration* -- It allows a person: (1) convicted of certain felonies involving controlled substances; and (2) sentenced as a habitual offender; to petition the sentencing court to vacate any additional fixed term of imprisonment added to the person's sentence because the person was found to be a habitual offender. It requires the court to order the Department of Correction (DOC) to determine the person's new expected release date if the court vacates an additional fixed term of imprisonment added to the person's sentence. It requires DOC to release the person if DOC determines that the person's release date occurred before the date the court vacated the person's sentence.
- B. *Hold Harmless* -- It prohibits a person from bringing an action against the state or an employee of the state if the department determines that the person's release date occurred before the date the court vacated the person's sentence.

Effective Date: July 1, 2008.

Explanation of State Expenditures: (Revised) *Vacating Additional Fixed Term of Incarceration* -- Habitual offenders have been convicted of three unrelated felonies at different points in time. The third felony is called the underlying offense. The advisory sentence is the length of incarceration that can be either increased for aggravating circumstances or reduced for mitigating circumstances.

If a person is found by the court to be an habitual offender, the court is required to add a fixed term that is not less than the advisory sentence for the underlying offense nor more than three times the advisory sentence for the underlying offense. This added sentence may not exceed 30 years.

The habitual offender enhancement has been in statute since at least 1976. In 2001, HEA 1001 amended the statute to exclude certain drug possession felonies and if the offender was convicted of only one dealing offense from being an applicable crime that would be eligible for the habitual offender enhancement. HEA 1001 – 2001 did not have a retroactive provision, so offenders given the habitual offender enhancement prior to 2001 were not given a sentence reduction. This bill would permit a person who was sentenced as an habitual offender before 2001 with a drug possession or dealing felony as a contributing felony to petition the sentencing court to have the offender's sentence reviewed. A court finding that the person who received an habitual offender enhancement could have that portion of the sentence vacated if the court vacates this additional fixed term of incarceration. The court would have this discretion. Offenders with reduced sentences would have their release dates adjusted.

LSA identified 63 offenders in DOC facilities on October 23, 2007, with an intake date prior to July 1, 2001. Of these, 26 offenders have early release dates between 2007 and 2013.

If these offenders are released earlier than scheduled, the Department of Correction could have reduced expenditures in housing offenders in DOC facilities. On average, the variable cost for housing an additional offender in a DOC facility is \$35 per day, based on the cost of placing an offender in a county jail. The average annual cost per offender in a DOC-operated facility was \$19,185 in FY 2007.

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) *Vacating Additional Fixed Term of Incarceration* -- Courts that sentenced these offenders could experience some increase in caseload if offenders petition the courts to review their sentences to determine whether they are eligible for a sentence reduction.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts; Prosecuting attorney's office; County sheriffs.

Information Sources: Department of Correction.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.